

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL J. MITCHELL and
TAMMITHA M. MITCHELL, husband
and wife

vs.

CI-02-CV3652

POWERMATIC CORPORATION, a/k/a
POWERMATIC, INC., JET EQUIPMENT
& TOOLS, INC., AND DEVLIEG-
BULLARD, INC. a/k/a DEVLIEG
BULLARD II, INC.

JURY TRIAL DEMANDED

ORDER

AND NOW, this day of , 2003, it is ORDERED and DECREED that the
motion for summary judgment of DeVlieg-Bullard II, is DENIED without prejudice with leave to
DeVlieg-Bullard, II to re-file the motion upon the completion of discovery.

BY THE COURT:

J.

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**ANSWER OF POWERMATIC CORPORATION, INCORRECTLY
DESIGNATED AS POWERMATIC CORPORATION, A/K/A
POWERMATIC, INC. AND WMH TOOL GROUP, INC.,
FORMERLY KNOWN AS JET EQUIPMENT & TOOL, INC.
TO THE MOTION FOR SUMMARY JUDGMENT OF DEVLIEG-BULLARD, II, INC.**

1. Admitted.
2. Admitted.
3. Answering defendant avers that the plaintiffs' complaint speaks for itself.

4. - 7. After making reasonable inquiry, answering defendant is without sufficient knowledge to form a belief as to the truth of the averments of these paragraphs or their applicability to the motion for summary judgment of De-Vlieg Bullard, II, Inc. Plaintiffs are asserting claims for product liability, including claims for successor liability and the “product line exception” against all defendants. By order of May 15, 2003, Your Honorable Court extended the discovery deadline to August 15, 2003, and there is presently outstanding interrogatories directed to De-Vlieg Bullard, II, Inc. by Powermatic Corporation served on May 16, 2003, and not yet responded to by De-Vlieg-Bullard, II, Inc.

8. - 11. Answering defendants are advised and therefore aver that the allegations of these paragraphs constitute statements of law to which no response need be made.

12. Answering defendant is advised and therefore avers that Pennsylvania substantive law is not applicable to the duty to respond to a motion for summary judgment filed in the federal court.

13. After making reasonable inquiry, answering defendant is without sufficient knowledge to form a belief as to the truth of the averments of these paragraphs or their applicability to the motion for summary judgment of De-Vlieg Bullard, II, Inc. Plaintiffs are asserting claims for product liability, including claims for successor liability and the "product line exception" against all defendants. By order of May 15, 2003, Your Honorable Court extended the discovery deadline to August 15, 2003, and there is presently outstanding interrogatories directed to De-Vlieg Bullard, II, Inc. by Powermatic Corporation served on May 16, 2003, and not yet responded to by De-Vlieg-Bullard, II, Inc.

WHEREFORE, defendants, Powermatic Corporation, incorrectly designated as Powermatic Corporation, a/k/a Powermatic, Inc. and WMH Tool Group, Inc., formerly known as Jet Equipment & Tool, Inc., respectfully pray that the motion for summary judgment of De-Vlieg Bullard, II, Inc. be denied without prejudice to renew its motion for summary judgment after the passage of the deadline for discovery.

BENNETT, BRICKLIN & SALTZBURG LLP

BY:

**Joel Paul Fishbein, Esquire
Attorney for Defendants,
Powermatic Corporation, incorrectly
designated as Powermatic Corporation, a/k/a
Powermatic, Inc., and WMH Tool Group, Inc.,
formerly known as Jet Equipment & Tool, Inc.**

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MEMORANDUM OF LAW

Defendants, Powermatic Corporation, incorrectly designated as Powermatic Corporation, a/k/a Powermatic, Inc., and WMH Tool Group, Inc., formerly known as Jet Equipment & Tools, Inc., oppose the motion for summary judgment of DeVlieg-Bullard, II, Inc. at the present time on the basis that it is premature in light of the extension of the discovery period to August 15, 2003, and the serving upon DeVlieg-Bullard II, Inc. of interrogatories by Powermatic Corporation on May 16, 2003; said interrogatories not having been answered. Powermatic Corporation and WMH Tool Group, Inc. do not at the present time have sufficient information as to the potential liability of DeVlieg Bullard, II, Inc. on theories of successor liability or the product line exception of Pennsylvania product liability law.

WHEREFORE, defendants, Powermatic Corporation, incorrectly designated as Powermatic Corporation, a/k/a Powermatic, Inc. and WMH Tool Group, Inc., formerly known as Jet Equipment & Tool, Inc., respectfully pray that the motion for summary judgment of De-Vlieg Bullard, II, Inc. be denied without prejudice.

BENNETT, BRICKLIN & SALTZBURG LLP

BY: _____
JOEL PAUL FISHBEIN, Esquire
Attorney for Defendants,
Powermatic Corporation, incorrectly
designated as Powermatic Corporation, a/k/a
Powermatic, Inc., and WMH Tool Group, Inc.,
formerly known as Jet Equipment & Tool, Inc.

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I do hereby certify that service of a true and correct copy of the answer of Powermatic Corporation and WMH Tool Group, Inc. to the motion for summary judgment of De-Vlieg Bullard II, Inc. was made on the 23rd day of May, 2003, to the parties listed below by United States Mail, postage pre-paid.

Soren P. West, Esquire
319 North Duke Road
Lancaster, PA 17602-4915

Warren E. Voter, Esquire
Sweeney & Sheehan
1515 Market Street, 19th Floor
Philadelphia, PA 19102

BENNETT, BRICKLIN & SALTZBURG LLP

BY: _____
JOEL PAUL FISHBEIN, Esquire
Attorney for Defendants